



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMra13121705

██████████,
Complainant,

v.

WRIGHT'S TREE SERVICE,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission,") pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred as alleged. 910 IAC 1-3-2(c).

On December 10, 2013, ██████████ ("Complainant") filed a Complaint with the Commission against Wright's Tree Service ("Respondent") alleging discrimination on the basis of race in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*). Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

There are two issues pending before the Commission. The first issue before the Commission is whether Respondent compensated Complainant at a lower rate than similarly-situated employees of another race. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he was paid less than similarly-situated employees of another race; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees of another race were treated more favorably under similar circumstances. Again, it is evident that Complainant is a member of a protected class by virtue of his race, African-American; however, there is sufficient evidence to believe that he was compensated at a lower rate than similarly-situated employees while employed in Louisville. However, the pay disparity was remedied once Complainant was transferred to Indianapolis.

By way of background, Respondent hired Complainant as a Trimmer Class D (hereafter "TD") for the Louisville office on or about August 21, 2013. While Respondent admits that Class D is the lowest, most entry level position in the agency, it admitted that "all TDs in Louisville at the time Mr. ██████████ was working there were paid \$15.09/hr." Ironically, however, Respondent also admitted that "Mr. ██████████'s starting hourly wage for his TD position located in Louisville was



\$14.48,” resulting in a pay disparity of \$0.61 for several weeks. In contrast, Respondent asserts that all “TDs in Indianapolis, IN where [Complainant] was to eventually transfer were paid \$10.95/hr.,” and evidence reveals that upon voluntarily requesting to transfer to Indianapolis, Complainant received \$10.95/hr. in accordance with Respondent’s pay scale for Indianapolis. Moreover, evidence shows that similarly-situated TDs in Indianapolis were compensated at an identical rate.

Despite Respondent’s assertions, there is sufficient evidence to believe that Complainant was subjected to less favorable terms and conditions than his similarly-situated counterparts. Specifically, evidence shows that Complainant received \$0.61/hr. less in compensation than all similarly-situated TDs in Louisville for a period of several weeks. As Respondent asserts that all TDs in Louisville subject to the same classification were compensated in a manner more favorable than Complainant, probable cause exists that a discriminatory practice occurred with respect to this issue. However, it is clear that Complainant was compensated at the reduced rate of \$10.95/hr. as were all other similarly-situated TDs, after transferring to the Indianapolis branch.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910-IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

The second issue before the Commission is whether Complainant was subject to an adverse employment action because of his race. In order to prevail, Complainant must show the following: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent’s legitimate business expectations; and (4) similarly-situated employees of another race were treated more favorably under similar circumstances. It is evident that Complainant is a member of a protected class by virtue of his race, African-American; however, no evidence has been provided or uncovered to show that Complainant was subjected to an adverse employment action as alleged. Moreover, evidence shows that Complainant failed to meet Respondent’s legitimate business expectations and that similarly-situated employees were treated similarly under similar circumstances.

By way of background and at all times relevant to the Complaint, Respondent’s policies and procedures required employees to wear approved hard hats at all times while on the job site. Nonetheless, Complainant failed to meet Respondent’s legitimate business expectations. Specifically, on or about November 20, 2013, Respondent issued Complainant a warning letter for being near the work truck without wearing a hard hat in contravention of policy and procedure. While the letter noted that further infractions could result in disciplinary action, no evidence has been provided or uncovered to show that Complainant was subjected to an adverse employment action by virtue of the warning. Despite Complainant’s assertions, there is no evidence to support his claims. Rather, no adverse employment action affecting tangible aspects of his employment

such as a demotion or suspension occurred as a result of the warning. Moreover, evidence shows that Respondent has issued similar warnings to similarly-situated employees of various races. As such and based upon the aforementioned, there is no probable cause to believe that a discriminatory practice occurred as alleged with respect to the second issue.

Complainant may appeal this Finding. 910 IAC 1-3-2(g). The written appeal request must be filed with the Commission within fifteen (15) days of receipt of the Notice of Finding and must include any new and additional evidence relied on by Complainant to support the appeal.

September 3, 2015

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission